

**HAMMONDLAW, P.C.**

JULIAN HAMMOND (SBN 268489)  
jhammond@hammondlawpc.com  
POLINA BRANDLER (SBN 269086)  
pbrandler@hammondlawpc.com  
ARI CHERNIAK (SBN 290071)  
acherniak@hammondlaw.com  
1201 Pacific Ave Suite 600  
Tacoma WA 98402  
(310) 601-6766  
(310) 295-2385 (Fax)

**BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP**

Norman B. Blumenthal (SBN #068687)  
Kyle R. Nordrehaug (SBN #205975)  
Aparajit Bhowmik (SBN #248066)  
Nicholas J. De Blouw (SBN #280922)  
2255 Calle Clara  
La Jolla, CA 92037  
Telephone: (858) 551-1223  
Facsimile: (858) 551-1232

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN MATEO**

STACEY SERNA and LOURDES DE  
GUZMAN ANGEL, on behalf of the State of  
California, as private attorneys general,

Plaintiffs,

vs.

GURNICK ACADEMY OF MEDICAL ARTS,  
LLC, a California Limited Liability Company,

Defendant.

Case No. 22-CIV-01185

**NOTICE OF MOTION AND MOTION  
TO APPROVE PAGA SETTLEMENT;  
and,**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION**

Hearing Date: December 14, 2023  
Hearing Time: 10:00 a.m.

Judge: Hon. Susan L. Greenberg  
Dept.: 3  
Courtroom: 2B

Action Filed: March 17, 2022  
Trial Date: None Set

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 YOU ARE HEREBY NOTIFIED THAT at 10:00 a.m. on December 14, 2023, or as  
3 soon thereafter as the matter can be heard, in Department 3 of the above entitled Court  
4 before the Honorable Susan L. Greenberg, Plaintiffs Stacey Serna and Lourdes De Guzman  
5 Angel (“Plaintiffs”) will and hereby do move for an order approving the settlement of the  
6 PAGA claim alleged against Defendant Gurnick Academy of Medical Arts, LLC  
7 (“Defendant”) in accordance with Labor Code §2699(l). The proposed settlement is set forth  
8 in the accompanying PAGA Settlement Agreement (“Agreement”).

9 This Motion will be based on this notice, the accompanying points and authorities, the  
10 Declaration of Julian Hammond (“Decl. Hammond”), Declaration of Kyle Nordrehaug  
11 (“Decl. Nordrehaug”), the Agreement, and the complete files and records in this action. The  
12 Labor Workforce Development Agency has been served with this motion and the Settlement  
13 Agreement as set forth in the accompanying proof of service.

14 Respectfully submitted,

15 Dated: September 15, 2023

**BLUMENTHAL NORDREHAUG  
BHOWMIK DE BLOUW LLP**

17 By: /s/ Kyle Nordrehaug  
18 Norman B. Blumenthal  
19 Kyle R. Nordrehaug  
Aparajit Bhowmik

**HAMMONDLAW, P.C.**

*Attorneys for Plaintiffs*

**TABLE OF CONTENTS**

|                                                                                        | <b><u>Page</u></b> |
|----------------------------------------------------------------------------------------|--------------------|
| I. INTRODUCTION.....                                                                   | 6                  |
| II. RELEVANT FACTS.....                                                                | 6                  |
| III. TERMS OF THE PAGA SETTLEMENT .....                                                | 9                  |
| IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS.....                                      | 12                 |
| V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE<br>SETTLEMENT OF THE PAGA CLAIM..... | 13                 |
| VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE.....                         | 16                 |
| VII. CONCLUSION.....                                                                   | 18                 |

## **TABLE OF AUTHORITIES**

**Page(s)**

### **Cases:**

|                                                                                                              |        |
|--------------------------------------------------------------------------------------------------------------|--------|
| <i>Amaro v. Anaheim Arena Mgmt., LLC,</i><br>69 Cal. App. 5th 521 (2021) .....                               | 16     |
| <i>Boyd v. Bank of America,</i><br>2014 WL 6473804, at *11 (C.D. Cal. 2014).....                             | 17     |
| <i>Cardenas v. McLane Foodservice, Inc.,</i><br>2011 U.S. Dist. LEXIS 13126 (C.D. Cal. 2011).....            | 14     |
| <i>Carrington v. Starbucks Corp.,</i><br>30 Cal.App.5th 504 (2018).....                                      | 14     |
| <i>Chavez v. Netflix, Inc.,</i><br>162 Cal.App.4th 43 (2008).....                                            | 16     |
| <i>Fleming v. Covidien,</i><br>2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....                            | 14     |
| <i>Hopkins v. Stryker Sales Corp.,</i><br>No. 11-CV-02786-LHK, 2013 WL 496358 (N.D. Cal. Feb. 6, 2013).....  | 17     |
| <i>In re Taco Bell Wage &amp; Hour Actions,</i><br>2016 U.S. Dist. LEXIS 48557 (E.D. Cal. Apr. 6, 2016)..... | 14     |
| <i>Iskanian v. CLS Transportation,</i><br>59 Cal. 4th 348, 381 (2014).....                                   | 6      |
| <i>Ketchum v. Moses,</i><br>24 Cal.4th 1122, 1132 (2001).....                                                | 17     |
| <i>Kim v. Reins Int'l Cal., Inc.,</i><br>9 Cal. 5th 73, 80 (2020) .....                                      | 9      |
| <i>Laffitte v. Robert Half Int'l,</i><br>1 Cal. 5th 480, 503 (2016).....                                     | 16, 17 |
| <i>Makabi v. Gedalia,</i><br>2016 Cal. App. Unpub. 1489 (2nd Dist. Ct. of App. 2016).....                    | 14     |

|    |                                                  |           |
|----|--------------------------------------------------|-----------|
| 1  | <i>Pellegrino v. Robert Half Intern., Inc.</i> , |           |
| 2  | 182 Cal.App.4th 278 (2010).....                  | 17        |
| 3  | <i>Stetson v. Grissom</i> ,                      |           |
| 4  | 821 F.3d 1157, 1166 (9th Cir. 2016).....         | 17        |
| 5  | <i>Vandervort v. Balboa Capital Corp.</i> ,      |           |
| 6  | 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....    | 17        |
| 7  | <i>Wershba v. Apple Computer, Inc.</i> ,         |           |
| 8  | 91 Cal.App.4th 224, 254 (2001).....              | 17        |
| 9  | <i>ZB, N.A. v. Superior Court</i> ,              |           |
| 10 | 8 Cal.5th 175 (2019).....                        | 6, 10, 12 |

|    |                                  |               |
|----|----------------------------------|---------------|
| 11 | <b><u>Statutes:</u></b>          |               |
| 12 |                                  |               |
| 13 | California Labor Code §2698..... | 8, 11         |
| 14 | California Labor Code §2699..... | <i>passim</i> |

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Stacey Serna and Lourdes De Guzman Angel (“Plaintiffs”) reached a  
4 settlement of the California Private Attorneys General Act, Cal. Labor Code §2699, *et seq.*  
5 (“PAGA”) claim asserted in this action against Defendant Gurnick Academy of Medical  
6 Arts, LLC. (“Defendant”) (collectively, the “Parties”) which provides for a “Gross PAGA  
7 Settlement Amount” payment in the amount of \$545,000.00. In accordance with California  
8 Labor Code §2699(1), Plaintiffs now ask this Court to review and approve the settlement of  
9 Plaintiffs’ PAGA claims.<sup>1</sup> This is only a settlement of the PAGA claims for civil penalties,  
10 and is not a class settlement and does not release the individual wage claims, if any, of the  
11 affected employees other than the Plaintiffs themselves. Cal. Labor Code § 2699(g)(1);  
12 *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8  
13 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

14 The PAGA settlement is set forth in the accompanying PAGA Settlement Agreement  
15 (“Agreement”) and the form used for Agreement is the Los Angeles Superior Court’s model  
16 form. A true and correct copy of the Agreement which sets forth the terms for the settlement  
17 of the PAGA claims is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug, filed  
18 herewith. Capitalized terms shall have the same meaning as defined in the Agreement. The  
19 LWDA received notice of this Settlement and this motion as set forth in the accompanying  
20 proof of service.

21 A proposed order confirming review and approval of the PAGA settlement is  
22 submitted herewith.

23 **II. RELEVANT FACTS**

24 PAGA Counsel mailed the necessary correspondence to the California Labor and  
25 Workforce Development Agency (“LWDA”) on July 9, 2021 on behalf of Plaintiff Lourdes  
26 De Guzman Angel, requesting authorization from the LWDA to seek civil penalties as  
27

28 <sup>1</sup> Section 2699(1)(2) provides as follows: “The superior court shall review and approve any settlement of any civil action pursuant to this part.”

1 provided by the Private Attorney General Act of 2004 (“PAGA”) for the wage and hour  
2 violations alleged in the PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3(a)). The 65-  
3 day notice period for the LWDA to notify of its intent to investigate expired on September  
4 13, 2021.

5 On October 27, 2021, Plaintiff De Guzman Angel filed a Representative Action  
6 Complaint in Contra Costa Superior Court against Defendant Gurnick Academy of Medical  
7 Arts, LLC [Case No. C21-02232] alleging a single cause of action for recovery of civil  
8 penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*][“*Angel Action*”].

9 PAGA Counsel mailed the necessary correspondence to the California Labor and  
10 Workforce Development Agency (“LWDA”) on March 2, 2022 on behalf of Plaintiff Stacey  
11 Serna, requesting authorization from the LWDA to seek civil penalties as provided by the  
12 Private Attorney General Act of 2004 (“PAGA”) for the wage and hour violations alleged in  
13 the PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3(a)). The 65-day notice period for  
14 the LWDA to notify of its intent to investigate expired on May 6, 2022.

15 On March 17, 2022, Plaintiff Serna commenced the instant action by filing a Class  
16 Action Complaint against Defendant Gurnick Academy of Medical Arts, LLC alleging the  
17 following causes of action: (1) Sexual Harassment in Violation of FEHA (Cal. Gov. Code  
18 §§12900 *et seq.*); (2) Failure to Prevent Harassment in Violation of FEHA (Cal Gov. Code  
19 §12940); (3) Failure to Pay Wages for All Hours Worked; (4) Failure to Pay Overtime; (5)  
20 Failure to Provide Rest Periods and Pay Rest Period Premiums; (6) Failure to Provide Meal  
21 Periods and Pay Meal Period Premiums; (7) Failure to Issue Accurate Itemized Wage  
22 Statements; (8) Failure to Reimburse Business Expenses; and (9) Violations of Cal. Bus. &  
23 Prof. Code §§ 17200, *et. seq.*

24 On May 9, 2022, Plaintiff Serna filed a First Amended Class and Representative  
25 Action adding a tenth cause of action for Civil Penalties under the Private Attorneys’  
26 General Act of 2004, Cal. Lab. Code §§ 2698, *et. seq.*

1 As part of this Settlement, Plaintiff Serna is filing a Second Amended Complaint in  
2 the instant action which incorporates the claims, allegations, and causes of action contained  
3 in the *Angel* Action and added Lourdes De Guzman Angel as a plaintiff.

4 Plaintiffs and Defendant agreed to mediate with Lisa Klerman. Prior to the mediation,  
5 the Parties conducted significant investigation and discovery of the facts and law. Defendant  
6 produced hundreds of documents relating to its policies, practices, and procedures regarding  
7 paying non-exempt employees for all hours worked, overtime, meal and rest period policies,  
8 payroll and operations policies, and more. Plaintiffs were provided with sufficient records  
9 and data to determine the number of Aggrieved Employees and the number of pay periods in  
10 the PAGA Period. The Parties agree that the above-described investigation and evaluation,  
11 as well as the information exchanged during the settlement negotiations, are more than  
12 sufficient to assess the merits of the Parties' positions and to compromise the issues on a fair  
13 and equitable basis. (Declaration of Kyle Nordrehaug, at ¶3(b)).

14 Plaintiffs' theory of PAGA liability as argued at mediation alleged that Defendant  
15 failed to pay employees for all hours worked. For example, Plaintiffs alleged that Defendant  
16 required and/or expected Aggrieved Employees to work before the start of classes in order to  
17 prepare syllabi and other course materials, and also expected Aggrieved Employees to work  
18 outside of instructional and/or classroom time to communicate with students, to prepare for  
19 class sessions, and to grade exams and assignments – and discouraged Aggrieved Employees  
20 from recording hours outside of instructional and/or classroom time. Plaintiffs also alleged  
21 Defendant employed a number of strategies in order to reduce and/or eliminate the overtime  
22 it owed to the Aggrieved Employees, such as directing employees to record time worked  
23 over 8 hours in a particular day or over 40 hours in a particular week on the following day or  
24 following week so that no overtime would be owing, pressuring employees to record less  
25 overtime and pressuring employees not to record overtime by aggressively questioning them  
26 each time they recorded overtime or requested permission to work overtime. Plaintiffs also  
27 alleged Defendant maintained policies and/or practices that impeded Aggrieved Employees'  
28 ability to take off-duty meal and rest breaks because Defendant expected and/or required

1 employees to be available to students for questions before and after class, as well as during  
2 classroom breaks, which was the only time otherwise available for instructors to take breaks.  
3 Plaintiffs also alleged Defendant provided inaccurate wage statements that failed to state  
4 actual hours worked and also failed to reimburse Aggrieved Employees for business  
5 expenses such as home internet, home office and personal cell phone expenses. (Declaration  
6 of Kyle Nordrehaug, at ¶3(b)).

7 On April 25, 2023, the Parties engaged in an all-day mediation session before  
8 Mediator Klerman, a respected and experienced mediator knowledgeable of both the wage  
9 and hour laws and representative claims at issue in this action. Through arms-length  
10 negotiations with the assistance of the mediator, the Parties reached an agreement to settle  
11 the PAGA claims in this action which led to the signing of a Memorandum of Understanding  
12 memorializing the settlement.<sup>2</sup> (Declaration of Kyle Nordrehaug, at ¶3(c)).

13 The settlement was negotiated in light of all known facts and circumstances and the  
14 uncertainty associated with litigation – including the risk of Plaintiffs not being able to  
15 maintain representative claims, the difficulty of proving Plaintiffs’ claims in a manageable  
16 trial, the merits of Defendant’s potential defenses, and the significant delay and potential  
17 appellate issues inherent to litigation – and was reached after extensive arm’s length  
18 negotiations, with the assistance of Mediator Klerman. (Declaration of Kyle Nordrehaug, at  
19 ¶3(c)).  
20

### 21 **III. TERMS OF THE PAGA SETTLEMENT**

22 The PAGA settlement is subject to Court approval consistent with Labor Code  
23 §2699(1)(2). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a  
24

---

25 <sup>2</sup> In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle  
26 Plaintiffs’ individual claims pursuant to separate confidential Individual Settlement Agreements  
27 (“Individual Settlement”)(Settlement Agreement at ¶ 2.2). The individual claims were not at issue in  
28 this action and exist independent and apart from the PAGA claims at issue before the Court. *See Kim v. Reins Int’l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does not strip an aggrieved employee of standing, as the state’s authorized representative, to pursue PAGA remedies” nor resolve the PAGA claims.).

1 “Gross PAGA Settlement Amount” payment in the amount of \$545,000 to resolve the  
2 Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this  
3 PAGA Settlement of \$545,000, there is a deduction of attorneys’ fees (“PAGA Counsel Fees  
4 Payment”) in the amount of \$181,666 (which is one-third of the PAGA Settlement),  
5 reimbursement of incurred costs (“PAGA Counsel Litigation Expenses Payment”) in an  
6 amount not to exceed \$20,000, and Settlement Administration Costs (“Administration  
7 Expenses Payment”) not to exceed \$15,000. (Agreement at ¶¶ 3.2.1-3.2.2).<sup>3</sup> After these  
8 deductions, the amount remaining is the “PAGA Payment”, which is estimated to be no less  
9 than \$328,334.

10 Of the PAGA Payment amount, seventy-five percent (75%)(no less than \$246,250.50)  
11 will be paid to the LWDA and the remaining twenty-five percent (25%) (no less than  
12 \$82,083.50) will be paid to the Aggrieved Employees (Agreement at ¶ 3.2.3)<sup>4</sup> This 75/25  
13 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8  
14 Cal.5th 175 (2019).

15 The Individual PAGA Payment for each Aggrieved Employee shall be based on the  
16 number of pay periods each Aggrieved Employee worked during the PAGA Period as an  
17 Aggrieved Employee, as a percentage of the total pay periods worked by all Aggrieved  
18 Employees during the PAGA Period and/or Remote PAGA Period.<sup>5</sup> The PAGA Period is  
19

---

20 <sup>3</sup> If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses  
21 Payment less than the amounts requested, the Administrator will allocate the remainder of these  
22 amounts to the PAGA Payment. (Settlement Agreement at ¶ 3.2.1). To the extent the Administration  
23 Expenses are less or the Court approves payment less than \$15,000, the Administrator will allocate  
24 the remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

25 <sup>4</sup> “Aggrieved Employees” means all individuals who are or previously were employed by  
26 Defendant in California and classified as a non-exempt employee at any time during the PAGA  
27 Period and all current and former employees of Defendant in California who were required to  
28 work remotely during the Remote PAGA Period. (Settlement Agreement at ¶¶ 1.4, 1.23).

<sup>5</sup> See Settlement Agreement at ¶ 3.2.3 (“The Administrator will calculate each Individual PAGA  
Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Payment by  
the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the  
PAGA Period and/or Remote PAGA Period and (b) multiplying the result by each Aggrieved  
Employee’s PAGA Period Pay Periods.”)

1 the time period from August 23, 2020 to June 25, 2023. The Remote PAGA Period is the time  
2 period from March 18, 2020 to June 25, 2023 (Agreement at ¶¶ 1.23, 1.27).

3 For mediation, Defendant represented that there are approximately 884 Aggrieved  
4 Employees who collectively worked approximately 21,716 PAGA Pay Periods. (Agreement  
5 at ¶ 4.1).

6 Upon entry of final judgment, the Released Parties shall be entitled to a release from  
7 the State of California and the Aggrieved Employees only for any “Released PAGA Claims”,  
8 which means all claims for PAGA penalties and attorney’s fees and costs of suit arising out  
9 of PAGA penalties that were alleged, or reasonably could have been alleged, based on the  
10 facts stated in the Operative Complaint in either *Lourdes De Guzman Angel vs. Gurnick*  
11 *Academy of Medical Arts, LLC*, or *Stacey Serna vs. Gurnick Academy of Medical Arts, LLC*,  
12 respectively, and the respective PAGA Notices submitted by each Plaintiff to the LWDA,  
13 which occurred during the PAGA Period and Remote PAGA Period (the “Released PAGA  
14 Claims”) (Agreement at ¶ 5.2). The Released PAGA Claims does not include all other  
15 claims, including claims for vested benefits, wrongful termination, violation of the Fair  
16 Employment and Housing Act, unemployment insurance, disability, social security, workers’  
17 compensation, and California class claims, and PAGA claims outside of the PAGA Period  
18 and Remote PAGA Period. (*Id.*) The Released PAGA Claims do not include any claims that  
19 cannot be released as a matter of law. (*Id.*) The Agreement expressly confirms that “In no  
20 event shall the release of the Released PAGA Claims in this Settlement Agreement release  
21 any individual claims of any individuals.” (*Id.*)

22 Within five (5) days after the Effective Date, the Administrator will mail checks for  
23 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses  
24 Payment and the PAGA Counsel Expenses Payment. (Agreement at ¶ 4.4).<sup>6</sup> Checks will  
25 remain negotiable for one hundred eighty (180) days. (*Id.* at ¶ 4.4.1) For any Aggrieved  
26 Employee whose Individual PAGA Payment check is uncashed and cancelled after the void  
27

28 <sup>6</sup> Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement  
of the Individual PAGA Payments. (*Id.*).

1 date, the Administrator shall transmit the funds represented by such checks to the State  
2 Controller Unclaimed Property Fund in the name of the individual who failed to cash their  
3 check. (*Id.* at ¶ 4.4.3).

4 Pursuant to California Labor Code Section 2699(1), Plaintiffs are providing a copy of  
5 the Agreement and this motion to the LWDA concurrently with the filing of the instant  
6 motion for settlement approval as set forth in the accompanying proof of service in  
7 compliance with Labor Code section 2699(1). In addition, Plaintiffs shall submit to the  
8 LWDA a copy of the Court's judgment and order approving the Agreement within ten (10)  
9 days after entry of judgment or order.

#### 10 11 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

12 The claim before this Court is solely the representative claim under PAGA on behalf  
13 of the State of California for civil penalties pursuant to the PAGA. The parties have agreed  
14 to settle this PAGA claim in its entirety after investigation and an arm's length mediation  
15 session. (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and  
16 finally resolve the Released PAGA Claims asserted by Plaintiffs on behalf of the State of  
17 California. This is only a settlement of the PAGA claims for civil penalties, and is not a  
18 class settlement and does not release the individual claims, if any, of the Aggrieved  
19 Employees, other than any claims under PAGA. This settlement does not release any claim  
20 that is not a PAGA claim.<sup>7</sup> PAGA Counsel Fees equal to one-third of the Gross PAGA  
21 Settlement amount (\$181,666.00) and PAGA Counsel Litigation Expenses in an amount not  
22 to exceed \$20,000.00 will also be paid to PAGA Counsel as part of the settlement in  
23 accordance with California Labor Code § 2699(g)(1), as set forth in the Agreement.<sup>8</sup> Lastly,  
24 payment to the Administrator in an amount not to exceed \$15,000 to perform the  
25

26 <sup>7</sup> As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: "Nonparty employees are bound  
27 by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

28 <sup>8</sup> As set forth in the accompanying Declarations, PAGA Counsel incurred costs in the current  
amount of \$28,113.31, which exceeds the expense cap in the Agreement. See Declaration of  
Nordrehaug at ¶ 9; Decl. Hammond at ¶ 41.

1 administrative duties to distribute the settlement money shall also be paid. (Declaration of  
2 Kyle Nordrehaug, at ¶¶ 4-5.)

3  
4 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**  
5 **SETTLEMENT OF THE PAGA CLAIM**

6 Labor Code § 2699(l) requires that the Court “shall review and approve any  
7 settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement  
8 shall be submitted to the agency at the same time that it is submitted to the court.”  
9 Consequently, the parties respectfully ask the Court to review and approve the settlement of  
10 the PAGA claims and the PAGA Payment to be paid as part of the proposed settlement.

11 **A. The PAGA Settlement Amount To Be Paid Is Fair And Reasonable**

12 The Parties believe that the PAGA Settlement amount is fair and reasonable and  
13 therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency  
14 has released data on PAGA settlement amounts. After removing the outliers at the low and  
15 high end, the average, total settlement amount of PAGA claims is approximately \$10,000.  
16 Here, the Gross PAGA Settlement Amount of \$545,000 is significantly more than other  
17 PAGA settlements and constitutes approximately \$25 per pay period. (Declaration of  
18 Nordrehaug, at ¶6.)

19 This PAGA Settlement amount compares favorably to the estimated amount of PAGA  
20 penalties. With the assistance of an expert, Plaintiffs calculated that the maximum amount of  
21 statutory PAGA civil penalties was potentially \$2,171,600 based on 21,716 pay periods  
22 applicable to the Aggrieved Employees during the PAGA Period and Remote PAGA  
23 Period.<sup>9</sup> (Declaration of Nordrehaug, at ¶6.) Importantly, however, these calculations were  
24 performed at the maximum statutory rate for the penalties, when in fact, it is likely that any  
25 penalties awarded would be at a lower rate. California Labor Code Section 2699(e)(1)

---

26 <sup>9</sup> Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.  
27 The valuation of \$2,171,600 is the civil penalty amount without stacking. If stacking is permitted,  
28 then the valuation increases with each additional penalty added to each pay period. Plaintiffs,  
however, are not aware of any PAGA award which permitted stacking and in the cases cited herein,  
only one penalty per pay period was assessed.

1 permits a Court to award a lesser amount than the maximum civil penalty if based on the  
2 facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary  
3 and oppressive or confiscatory."

4 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal  
5 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay  
6 period. Therefore, at trial, any PAGA penalties awarded could be significantly less than  
7 Plaintiff's calculation even where Plaintiff prevailed on the PAGA claim. If the amount of \$5  
8 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties  
9 would be only \$108,580, which is far less than this settlement provides.

10 Under PAGA, Courts have considerable discretion to reduce the penalty award. In  
11 *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court  
12 reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the  
13 court found maximum penalties "unjust" because the employees had suffered no injuries.  
14 Some trial courts have actually awarded no civil penalties, even when Labor Code violations  
15 are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, \*5-7 (2nd Dist. Ct. of  
16 App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior  
17 Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.  
18 LEXIS 48557, \*40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

19 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove  
20 each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*,  
21 2011 U.S. Dist. LEXIS 13126, \*10 (C.D. Cal. 2011) ("Given the statutory language [of  
22 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven  
23 suffered a violation of the Labor Code by the defendant."). Here, Plaintiffs would need to  
24 prove that each Aggrieved Employee suffered a violation for each period the employee  
25 worked in relation to meal or rest period violations, failure to pay minimum wages, failure to  
26 pay overtime and sick pay wages, failure to provide accurate itemized wage statements, and  
27 failure to reimburse employees for required expenses.

1 Defendant maintains that Plaintiffs and the Aggrieved Employees were properly  
2 compensated, and that it did not violate the Labor Code. Accordingly, Defendant disputes  
3 and denies Plaintiffs' allegations and claims asserted in both the PAGA Notice and the  
4 Operative Complaint, which are resolved by the Agreement. Defendant asserted additional  
5 defenses to the PAGA claim, not only as to liability but also as to the amount of the  
6 penalties. Defendant could argue that no penalties prior to the PAGA notification should be  
7 awarded because the violations were not intentional, and at least one Court has so ruled.  
8 These defenses present a risk to the PAGA claims and the potential that some or all of the  
9 PAGA penalties sought may not be awarded. (Declaration of Nordrehaug, at ¶7.)

10 Given Defendant's potential defenses to the violations at issue, the risks and costs of  
11 continued litigation, Plaintiffs and their attorneys believe that the PAGA Settlement is fair  
12 and reasonable. (Declaration of Nordrehaug, at ¶7.) Defendant has similarly concluded that  
13 it is desirable that the action is settled in the manner and upon the terms and conditions set  
14 forth in the Agreement in order to avoid further expense, inconvenience and distraction of  
15 further legal proceedings, as well as the uncertainty of litigation. Defendant has determined  
16 that it is desirable and beneficial to put to rest the claims in this action and Defendant agrees  
17 that the PAGA Settlement is fair, reasonable, and adequate.

18 PAGA Counsel have significant experience litigating wage and hour claims including  
19 claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than  
20 similar settlements that courts have approved. (Declaration of Nordrehaug, at ¶¶ 7, 10.) The  
21 PAGA Settlement, along with the other terms of the proposed settlement, were negotiated by  
22 experienced counsel at arm's length with the assistance of a private mediator, Lisa Klerman.  
23 (Declaration of Nordrehaug, at ¶7.)

24 As set forth in the accompanying proof of service, the LWDA has been provided  
25 notice of this motion and the PAGA settlement. The decision of the LWDA to accept the  
26 PAGA Settlement and not oppose the motion should be given considerable weight. This is  
27 not a situation where the Court needs to be concerned about the rights of absent employees  
28 as in a class settlement, as this PAGA-only settlement does not release the individual claims

1 of absent employees other than PAGA claims, and the LWDA is a sophisticated government  
2 entity that is more than able to look out for its own rights.

3 **B. The Remaining Settlement Terms Are Fair And Reasonable**

4 Although PAGA requires that a court approve the proposed PAGA settlement, Labor  
5 Code § 2699(1) does not require that a court approve any other elements of the proposed  
6 settlement. Because there are no class allegations for which Plaintiffs seek approval, the  
7 approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not  
8 apply. Accordingly, the Court only needs to approve the settlement of the civil penalties  
9 sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for  
10 attorneys' fees and costs are reasonable.

11  
12 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

13 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the  
14 amount of \$181,666 representing one-third of the \$545,000 Gross PAGA Settlement  
15 Amount. PAGA does not have any requirements for reviewing attorneys' fees, and  
16 Plaintiffs' position is that the payment of attorneys' fees and costs in this settlement is a  
17 matter of contract for a contingent representation. Nevertheless, should this Court review the  
18 requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

19 First, the requested fees are justified by the result achieved. PAGA Counsel  
20 negotiated a recovery of \$545,000.00, and this result justifies the requested fees equal to one  
21 third of this recovery. This percentage is within the standard contingent recovery percentage  
22 of one-third, and this percentage is what was expressly approved by the Supreme Court in  
23 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.,*  
24 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that ““fee awards in class actions  
25 average around one-third of the recovery”” regardless of ““whether the percentage method or  
26 the lodestar method is used.”” (*quoting Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11  
27 (2008)).

1 Second, the fee award is justified by the work performed and contributions to the  
2 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8 and the  
3 Declaration of Hammond at ¶8, the fee award is less than PAGA Counsel's current lodestar  
4 which currently exceeds \$300,990.75, and therefore represents a negative multiplier with  
5 significant additional work to be performed.

6 Generally, the Ninth Circuit and California Courts award positive multipliers between  
7 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation  
8 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award  
9 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182  
10 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and  
11 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254  
12 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa*  
13 *Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which  
14 was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at \*11 (C.D.  
15 Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v.*  
16 *Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at \*6 (N.D. Cal. Feb. 6,  
17 2013) (approving fee award that represented a multiplier of 2.76 as falling within the  
18 "majority" range for risk multipliers).

19 Third, consideration of the enhancement factors justify the enhancement of the  
20 lodestar. Courts multiply the lodestar by a factor to account for the risk of non-payment,  
21 delay in payment, the quality of work, and the novelty and difficulty of the issues involved.  
22 See *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in  
23 cases that meet these criteria is an abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157,  
24 1166 (9th Cir. 2016).

25 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation  
26 expenses in the total amount of \$ \_\_\_\_\_ which is less than the \$20,000 allocation for costs  
27 in the Agreement, so the difference of \$ \_\_\_\_\_ will be added to the PAGA Payment amount.  
28 These expenses are documented in the accompanying Declaration of Nordrehaug at ¶9.

1  
2 **VII. CONCLUSION**

3 Based on the foregoing, Plaintiffs respectfully request this Court approve the PAGA  
4 settlement as set forth in the Agreement and enter the proposed order and judgment  
5 submitted herewith.

6  
7 Dated: September 15, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP**

8  
9 By: /s/ Kyle Nordrehaug  
10 Kyle Nordrehaug

11 **HAMMONDLAW, P.C.**

12 *Attorney for Plaintiffs*  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28